

Ofc. of Postsecondary Educ., Education

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(e) The Secretary does not accept assignment of a loan if—

(1) The institution has not provided the Social Security number of the borrower, unless the loan was made before September 13, 1982;

(2) The borrower has received a discharge in bankruptcy, unless—

(i) The bankruptcy court has determined that the loan obligation is non-dischargeable and has entered judgment against the borrower; or

(ii) A court of competent jurisdiction has entered judgment against the borrower on the loan after the entry of the discharge order; or

(3) The institution has initiated litigation against the borrower, unless the judgment has been entered against the borrower and assigned to the United States.

(f)(1) The Secretary provides an institution written notice of the acceptance of the assignment of the note. By accepting assignment, the Secretary acquires all rights, title, and interest of the institution in that loan.

(2) The institution shall endorse and forward to the Secretary any payment received from the borrower after the date on which the Secretary accepted the assignment, as noted in the written notice of acceptance.

(g)(1) The Secretary may determine that a loan assigned to the United States is unenforceable in whole or in part because of the acts or omissions of the institution or its agent. The Secretary may make this determination with or without a judicial determination regarding the enforceability of the loan.

(2) The Secretary may require the institution to reimburse the Fund for that portion of the outstanding balance on a loan assigned to the United States which the Secretary determines to be unenforceable because of an act or omission of that institution or its agent.

(3) Upon reimbursement to the Fund by the institution, the Secretary shall transfer all rights, title and interest of the United States in the loan to the institution for its own account.

(h) An institution shall consider a borrower whose loan has been assigned to the United States for collection to be in default on that loan for the pur-

pose of eligibility for title IV financial assistance, until the borrower provides the institution confirmation from the Secretary that he or she has made satisfactory arrangements to repay the loan.

(Approved by the Office of Management and Budget under control number 1845-0019)

(Authority: 20 U.S.C. 424, 1087cc)

[52 FR 45555, Nov. 30, 1987, as amended at 53 FR 49147, Dec. 6, 1988; 57 FR 32347, July 21, 1992; 57 FR 60707, Dec. 21, 1992; 59 FR 61412, Nov. 30, 1994; 64 FR 58315, Oct. 28, 1999; 65 FR 65614, Nov. 1, 2000; 67 FR 67077, Nov. 1, 2002; 72 FR 61997, Nov. 1, 2007; 78 FR 65805, Nov. 1, 2013]

Subpart D—Loan Cancellation

SOURCE: 52 FR 45758, Dec. 1, 1987, unless otherwise noted.

§ 674.51 Special definitions.

The following definitions apply to this subpart:

(a) *Academic year or its equivalent for elementary and secondary schools and special education:* (1) One complete school year, or two half years from different school years, excluding summer sessions, that are complete and consecutive and generally fall within a 12-month period.

(2) If such a school has a year-round program of instruction, the Secretary considers a minimum of nine consecutive months to be the equivalent of an academic year.

(b) *Academic year or its equivalent for institutions of higher education:* A period of time in which a full-time student is expected to complete—

(1) The equivalent of 2 semesters, 2 trimesters, or 3 quarters at an institution using credit hours; or

(2) At least 900 clock hours of training for each program at an institution using clock hours.

(c) *Title I Children:* Children of ages 5 through 17 who are counted under section 1124(c)(1) of the Elementary and Secondary Education Act of 1965, as amended.

(d) *Child with a disability:* A child or youth from ages 3 through 21, inclusive, who requires special education and related services because he or she has one or more disabilities as defined

in section 602(3) of the Individuals with Disabilities Education Act.

(e) *Community defender organizations:* A defender organization established in accordance with section 3006A(g)(2)(B) of title 18, United States Code.

(f) *Early intervention services:* Those services defined in section 632(4) of the Individuals with Disabilities Education Act that are provided to infants and toddlers with disabilities.

(g) *Educational service agency:* A regional public multi-service agency authorized by State law to develop, manage, and provide services or programs to local educational agencies as defined in section 9101 of the Elementary and Secondary Education Act of 1965, as amended.

(h) *Elementary school:* A school that provides elementary education, including education below grade 1, as determined by—

- (1) State law; or
- (2) The Secretary, if the school is not in a State.

(i) *Faculty member at a Tribal College or University:* An educator or tenured individual who is employed by a Tribal College or University, as that term is defined in section 316 of the HEA, to teach, research, or perform administrative functions. For purposes of this definition an educator may be an instructor, lecturer, lab faculty, assistant professor, associate professor, full professor, dean, or academic department head.

(j) *Federal public defender organization:* A defender organization established in accordance with section 3006A(g)(2)(A) of title 18, United States Code.

(k) *Firefighter:* A firefighter is an individual who is employed by a Federal, State, or local firefighting agency to extinguish destructive fires; or provide firefighting related services such as—

- (1) Providing community disaster support and, as a first responder, providing emergency medical services;
- (2) Conducting search and rescue; or
- (3) Providing hazardous materials mitigation (HAZMAT).

(l) *Handicapped children:* Children of ages 3 through 21 inclusive who require special education and related services because they are—

- (1) Mentally retarded;

(2) Hard of hearing;

(3) Deaf;

(4) Speech and language impaired;

(5) Visually handicapped;

(6) Seriously emotionally disturbed;

(7) Orthopedically impaired;

(8) Specific learning disabled; or

(9) Otherwise health impaired.

(m) *High-risk children:* Individuals under the age of 21 who are low-income or at risk of abuse or neglect, have been abused or neglected, have serious emotional, mental, or behavioral disturbances, reside in placements outside their homes, or are involved in the juvenile justice system.

(n) *Infant or toddler with a disability:* An infant or toddler from birth to age 2, inclusive, who needs early intervention services for specified reasons, as defined in section 632(5)(A) of the Individuals with Disabilities Education Act.

(o) *Librarian with a master's degree:* A librarian with a master's degree is an information professional trained in library or information science who has obtained a postgraduate academic degree in library science awarded after the completion of an academic program of up to six years in duration, excluding a doctorate or professional degree.

(p) *Local educational agency:* (1) A public board of education or other public authority legally constituted within a State to administer, direct, or perform a service function for public elementary or secondary schools in a city, county, township, school district, other political subdivision of a State; or such combination of school districts of counties as are recognized in a State as an administrative agency for its public elementary or secondary schools.

(2) Any other public institution or agency having administrative control and direction of a public elementary or secondary school.

(q) *Low-income communities:* Communities in which there is a high concentration of children eligible to be counted under title I of the Elementary and Secondary Education Act of 1965, as amended.

(r) *Medical technician:* An allied health professional (working in fields such as therapy, dental hygiene, medical technology, or nutrition) who is

certified, registered, or licensed by the appropriate State agency in the State in which he or she provides health care services. An allied health professional is someone who assists, facilitates, or complements the work of physicians and other specialists in the health care system.

(s) *Nurse*: A licensed practical nurse, a registered nurse, or other individual who is licensed by the appropriate State agency to provide nursing services.

(t) *Qualified professional provider of early intervention services*: A provider of services as defined in section 632 of the Individuals with Disabilities Education Act.

(u) *Secondary school*: (1) A school that provides secondary education, as determined by—

(i) State law; or

(ii) The Secretary, if the school is not in a State.

(2) However, State laws notwithstanding, secondary education does not include any education beyond grade 12.

(v) *Speech language pathologist with a master's degree*: An individual who evaluates or treats disorders that affect a person's speech, language, cognition, voice, swallowing and the rehabilitative or corrective treatment of physical or cognitive deficits/disorders resulting in difficulty with communication, swallowing, or both and has obtained a postgraduate academic degree awarded after the completion of an academic program of up to six years in duration, excluding a doctorate or professional degree.

(w) *State education agency*: (1) The State board of education; or

(2) An agency or official designated by the Governor or by State law as being primarily responsible for the State supervision of public elementary and secondary schools.

(x) *Substantial gainful activity*: A level of work performed for pay or profit that involves doing significant physical or mental activities, or a combination of both.

(y) *Teacher*: (1) A teacher is a person who provides—

(i) Direct classroom teaching;

(ii) Classroom-type teaching in a non-classroom setting; or

(iii) Educational services to students directly related to classroom teaching such as school librarians or school guidance counselors.

(2) A supervisor, administrator, researcher, or curriculum specialist is not a teacher unless he or she primarily provides direct and personal educational services to students.

(3) An individual who provides one of the following services does not qualify as a teacher unless that individual is licensed, certified, or registered by the appropriate State education agency for that area in which he or she is providing related special educational services, and the services provided by the individual are part of the educational curriculum for handicapped children:

(i) Speech and language pathology and audiology;

(ii) Physical therapy;

(iii) Occupational therapy;

(iv) Psychological and counseling services; or

(v) Recreational therapy.

(z) *Teaching in a field of expertise*: The majority of classes taught are in the borrower's field of expertise.

(aa) *Total and permanent disability*: The condition of an individual who—

(1) Is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment that—

(i) Can be expected to result in death;

(ii) Has lasted for a continuous period of not less than 60 months; or

(iii) Can be expected to last for a continuous period of not less than 60 months; or

(2) Has been determined by the Secretary of Veterans Affairs to be unemployable due to a service-connected disability.

(bb) *Tribal College or University*: An institution that—

(1) Qualifies for funding under the Tribally Controlled Colleges and Universities Assistance Act of 1978 (25 U.S.C. 1801 *et seq.*) or the Navajo Community College Assistance Act of 1978 (25 U.S.C. 640a note); or

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(2) Is cited in section 532 of the Equity in Education Land Grant Status Act of 1994 (7 U.S.C. 301 note).

(Authority: 20 U.S.C. 1087ee(a))

[52 FR 45758, Dec. 1, 1987, as amended at 59 FR 61412, Nov. 30, 1994; 65 FR 65690, Nov. 1, 2000; 74 FR 55661, Oct. 28, 2009]

§ 674.52 Cancellation procedures.

(a) *Application for cancellation.* To qualify for cancellation of a loan, a borrower shall submit to the institution to which the loan is owed, by the date that the institution establishes, both a written request for cancellation and any documentation required by the institution to demonstrate that the borrower meets the conditions for the cancellation requested.

(b) *Part-time employment.* (1) An institution may refuse a request for cancellation based on a claim of simultaneously teaching in two or more schools or institutions if it cannot determine easily from the documentation supplied by the borrower that the teaching is full-time. However, it shall grant the cancellation if one school official certifies that a teacher worked full-time for a full academic year.

(2) An institution may refuse a request for cancellation based on a claim of simultaneous employment as a nurse or medical technician in two or more facilities if it cannot determine easily from the documentation supplied by the borrower that the combined employment is full-time. However, it shall grant the cancellation if one facility official certifies that a nurse or medical technician worked full-time for a full year.

(c) *Break in service.* (1) If the borrower is unable to complete an academic year of eligible teaching service due to a condition that is covered under the Family and Medical Leave Act of 1993 (FMLA) (29 U.S.C. 2601, *et seq.*), the borrower still qualifies for the cancellation if—

(i) The borrower completes one half of the academic year; and

(ii) The borrower's employer considers the borrower to have fulfilled his or her contract requirements for the academic year for purposes of salary increases, tenure, and retirement.

(2) If the borrower is unable to complete a year of eligible service under

§§ 674.56, 674.57, 674.59, or 674.60 due to a condition that is covered under the FMLA, the borrower still qualifies for the cancellation if the borrower completes at least six consecutive months of eligible service.

(d) *Cancellation of a defaulted loan.* (1) Except with regard to cancellation on account of the death or disability of the borrower, a borrower whose defaulted loan has not been accelerated may qualify for a cancellation by complying with the requirements of paragraph (a) of this section.

(2) A borrower whose defaulted loan has been accelerated—

(i) May qualify for a loan cancellation for services performed before the date of acceleration; and

(ii) Cannot qualify for a cancellation for services performed on or after the date of acceleration.

(3) An institution shall grant a request for discharge on account of the death or disability of the borrower, or, if the borrower is the spouse of an eligible public servant as defined in § 674.64(a)(1), on account of the death or disability of the borrower's spouse, without regard to the repayment status of the loan.

(e) *Concurrent deferment period.* The Secretary considers a Perkins Loan, NDSL or Defense Loan borrower's loan deferment under § 674.34(c) to run concurrently with any period for which cancellation under §§ 674.53, 674.54, 674.55, 674.56, 674.57, 674.58, 674.59, and 674.60 is granted.

(2) For loans made on or after July 1, 1993, the Secretary considers a borrower's loan deferment under § 674.34 to run concurrently with any period for which a cancellation under §§ 674.53, 674.56, 674.57, or 674.58 is granted.

(f) *National community service.* No borrower who has received a benefit under subtitle D of title I of the National and Community Service Act of 1990 may receive a cancellation under this subpart.

(g) *Switching cancellation categories.* A borrower who qualifies for a cancellation under one of the cancellation categories in §§ 674.53, 674.56, 674.57, or 674.59 receives cancellation of 15 percent of the original principal for the first and second years of qualifying service, 20 percent of the original principal for the third and fourth years of